

## REMARKS

Claims 1, 6, 8, 10–13, 16–19, 25–28, 35–39, 41, and 42 are pending in the present application. Of these, Claims 26–28 and 41 have been amended, no claims have been canceled, and no claims have been added, leaving Claims 1, 6, 8, 10–13, 16–19, 25–28, 35–39, 41, and 42 for consideration upon entry of the Amendment.

### Interview Summary

Applicants sincerely thank Examiner Cheung for the discussion held on March 2, 2009, after initial exchange of voice mail on Friday, February 27, 2009. During the discussion, several questions were raised regarding the Office Action dated December 18, 2008. In particular, with regard to the outstanding rejection of Claims 1 and 25 over 35 U.S.C. 112, first paragraph, where the Examiner states that the structure of Chemical Formula 1 in these claims is not disclosed in the Specification, it was asked why this rejection was made where the Examiner had accepted the introduction of the formula in the Response filed May 12, 2008. The Examiner stated that the 112, first paragraph rejection was a separate issue and often follows a response to overcome a 112, second paragraph rejection, and that by clarifying the structure of original Chemical Formula 1 in Claims 1 and 25 to overcome the previous section 112, second paragraph rejection, new matter appeared to be added. The Examiner indicated that to further amend the structure or to remove the previously-entered amendments would likely result in reintroducing subject matter that would be rejected under section 112, second paragraph, and that therefore the Applicants should consider providing persuasive argument and a showing that the amendments which resulted in the present Chemical Formula 1 are not new matter.

Next, Applicants inquired as to why the allowance of Claims 1, 6, 8, 10–13, 16–19, 25–28, 35–39, 41, and 42 was revoked, and further why the rejection of these claims under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 6,455,650 (“Lipian”) was reinstated after apparently being persuasively argued in the Response filed May 12, 2008. The Examiner explained that because of the 112, first paragraph rejection discussed above, the Examiner was forced to consider the claims without the benefit of the amendments to Chemical Formula 1, and hence, the previous obviousness arguments were still valid.

Finally, Applicants inquired as to the Examiner's statement that the comparative examples entered by 1.132 declaration with the response filed on October 18, 2007 were not commensurate to the scope of the claims in view of Example 10 of Lipian. The Examiner declined to explain his reasoning in detail, stating that it would require too much time to review and explain, but indicated that the data entered in the 1.132 declaration should be a good comparison and show criticality of the features (i.e., the application of the method using the claimed precatalyst, ligand, and cocatalyst as applied to the exo-monomers, as we understand the), to achieve the unexpected results claimed (i.e., yield of 50% or more).

Applicants believe the above summary to be complete and correct. Applicants again wish to thank the Examiner for taking the time to discuss these matters with Applicant's agent, and believe that the questions raised and the present rejections will be fully addressed in the response attached hereinbelow.

#### Amended Claims

Claims 26-28 have each been amended to correct an inadvertent typographical error in each and to therefore properly depend from Claims 25-27, respectively.

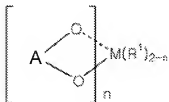
Claim 41 has been amended to remove the (allyl)palladium (acetate).

Reconsideration and allowance of the claims is respectfully requested based upon the above amendments and the following remarks.

#### Claim Rejections under 35 U.S.C. § 112, first paragraph

Claims 1, 6, 8, 10-13, 16-19, 25-28, and 35-39 are rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. The Examiner alleges that the structure of Chemical Formula 1:

Chemical Formula 1



which was entered to clarify the generic ligand structure [O-(A)-O] in the original

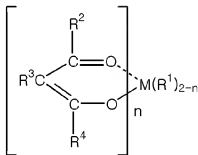
Chemical Formula 1, was not described in the specification in such a way as to reasonably convey that the Applicants had possession of the claimed invention.

Applicants respectfully disagree.

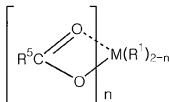
In order to determine whether an application meets the “written description” requirement with respect to later-filed claims, the application need not describe the claimed subject matter in exactly the same terms as used in the claims, *In re Lukach*, 442 F.2d 967, 969, 169 U.S.P.Q. 795 (C.C.P.A. 1971). It must simply indicate to those of ordinary skill in the art that as of the filing date the applicant had invented what is now claimed. *Id.*, at 1563, 19 U.S.P.Q.2d at 1116; see *In re Wertheim*, 541 F.2d 257, 191 U.S.P.Q. 90, (C.C.P.A. 1976). In particular, if a structure or process not explicitly described, it may still meet the description requirement if the concept of what is claimed is “inherent” in what is described.

In amending Claims 1 and 25 to include the revised and *clarified* structure of Chemical Formula 1, no new matter was introduced, since the application as a whole and the Examples in particular teach this embodiment. Specifically, Applicants note the disclosure in the specification and Examples of palladium (II) catalysts, including palladium (II) acetate ( $\text{Pd}(\text{OAc})_2$ ), palladium acetylacetonone ( $\text{Pd}(\text{acac})_2$ ), allylpalladium (II) acetyl acetate ( $(\eta^3\text{-C}_3\text{H}_5)\text{Pd}(\text{acac})$ ), etc., and more generally, Chemical Formulas 1a and 1b:

Chemical Formula 1a



Chemical Formula 1b



each of which clearly shows a version of depicting such catalysts, in which an acac (Chemical Formula 1a) and an acetate (Chemical Formula 1b) are each bonded to a metal center by an oxygen bearing a formal charge by default, and an oxygen with available lone pairs or a vacant orbital to coordinate to the metal thus completing the structure of the bidentate ligand. See Specification, p. 9, lines 5-8; p. 13, lines 1-2; and e.g., preparative Example 6, p. 26, lines 1-8; Example 1, lines 10-13; Examples 2-4, p. 27, lines 3-10. One skilled in the art will appreciate that these structures of Chemical Formulas 1a and 1b, and the above exemplary precatalysts, are understood to represent fully the inherent structures of bidentate ligands, and that therefore to redraw the (O-A-O) ligand of original Chemical Formula 1 to have the structure above of redrawn Chemical Formula 1 does not introduce new matter and was therefore in the possession of Applicants at the time of filing of the application.

“[M]atter added that makes explicit that which was implicit, inherent, or intrinsic in the original disclosure is not new matter and is permitted”. 35 U.S.C. § 132. Furthermore, “conformation of one part of the disclosure to another portion thereof is clearly permissible.” 37 C.F.R. § 1.117. Since Applicants have disclosed Examples wherein the structure of a precatalyst is an inherent feature of the particular exemplary precatalysts used, Applicants are permitted to later amend the Application to recite the inherent feature without introducing new matter. *In re Smythe and Shamos*, 178 U.S.P.Q. 279, 285-286 (C.C.P.A. 1973). Furthermore, the structures of Chemical Formulas 1a and 1b each explicitly disclose the salient structural features of Chemical Formula 1 that are rejected by the Examiner, with the exception that the non-oxygen portions of the bidentate ligand are depicted generally as structural subunit A in the redrawn Chemical Formula 1; however, as A in the ligand [O-(A)-O] is fully disclosed and supported, Chemical Formula 1 as redrawn merely clarifies the structure of the net ligand-metal complex which is an inherent feature in the structure of such catalysts.

Claims 1, 6, 8, 10-13, 16-19, 25-28, and 35-39 are further rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the enablement requirement, where the Examiner alleges that the precatalyst of Claim 25 “the O bond that connects to the M via a dative bond to be a double bond”. Applicants understand the Examiner’s concerns to be that Chemical Formula 1 requires the O<sup>••</sup>M dative bond that is shown to be a single bond, or else in the A-O<sup>••</sup>M bond sequence, that the A-O

should be an A=O bond. Applicants respectfully disagree that one skilled in the art would fail to be able to make or use the invention with the precatalyst of Chemical Formula 1 as written, and unequivocally state that the structure of Chemical Formula 1 *inherently* possesses and encompasses a double bond where necessary to provide a correct structure, as evidenced by the disclosure of the instant Specification, and that further modification of Chemical Formula 1 is therefore unnecessary.

Applicants drawing of the structure, which provides the antecedent basis for the exemplary palladium complexes of Claim 25, i.e., Pd(acetyl acetate)<sub>2</sub>, Pd(acetate)<sub>2</sub>, and (acetate)Pd(acetyl acetate), is fully supported by the Specification as originally filed, in which all such structures (carboxylates, acetylacetonates) were represented by the generic ligand structure [O-(A)-O] of original Chemical Formula 1. In clarifying the structure to show a 2-dimensional representation of the structure of the metal-ligand complex of Chemical Formula 1, Applicants did not further modify this structure as it is understood from the original structure [O-(A)-O] that A represents the non-oxygen containing structure of the ligand, and would inherently be limited to have a double-bonded oxygen which in turn provides a dative bond to the metal, i.e., the structure of a C=O···M structural subunit, when A represents a conjugated system as seen in Chemical Formulas 1a and 1b, above. However, in a generic representation of the core group A of the ligand, it is not necessary to show this level of detail in the structure, (i.e., [O-A=O]) as the Examiner appears to suggest, though drawn linearly here for convenience), as this would be a superfluous structural detail in view of the inherent structure implied by the limitations of Claim 25, and by the structures of Chemical Formulas 1a and 1b. It is well-established that what is conventional or well known to one of ordinary skill in the art need not be disclosed in detail. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d at 1384, 231 USPQ at 94. If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2D at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating “the description need not be in *ipsis verbis* [i.e., “in the same words”] to be sufficient”). Furthermore, MPEP 2173.05(a) states that “the patentee can act as his own lexicographer”. Hence, Applicants respectfully assert that Chemical Formula 1,

drawn as intended by the Applicant and when viewed in the context of Claim 25, Chemical Formulas 1a and 1b, and Chemical Formula 1 as originally filed, will be readily appreciated by the person skilled in the art to teach all elements of the instant claims with sufficient specificity so as to meet the enablement requirement.

An assertion by the PTO that the enabling disclosure is not commensurate in scope with the protection sought must be supported by evidence or reasoning substantiating those doubts. *See, In re Dinh-Nguyen*, 492 F.2d 856,858, 181 U.S.P.Q.47, 49 (C.C.P.A. 1974). Applicants note that Claim 25 and Chemical Formulas 1a and 1b clearly provide bounds and disclosure by which one skilled in the art will be readily able to practice the invention as currently claimed, the Examiner's concerns notwithstanding. In addition, applying accepted structural rules and formalities for drawing organometallic complexes, which Applicants note vary considerably by author, especially in the drafting of patent applications, would nonetheless lead one skilled in the art to conclude that the oxygen having a dative bond to a metal center must inevitably be a carbonyl oxygen, as otherwise, a non-stable, hypervalent structure would result for which there is no reasonable basis for support in the precatalyst art as contemplated by, disclosed by, and enabled by the instant Specification as filed. Reconsideration and withdrawal of the rejections under 35 U.S.C. 112, first paragraph, and allowance of the claims are therefore respectfully requested.

Claim Rejections under 35 U.S.C. §112, second paragraph

Claim 25 is rejected as allegedly indefinite for failing to particularly point out and distinctly claim the invention. In particular, the Examiner states that the claims precatalysts are not supported by the formula of Chemical Formula 1 in Claim 1. Applicants respectfully disagree for reasons detailed above and summarized here.

Applicants maintain that the structure of Chemical Formula 1 of claim 1 recites all essential limitations of the precatalysts claimed in Claim 25 in a generic manner, fully consistent with the scope of Claim 25. Applicants respectfully submit that the proper standard for determining indefiniteness is whether one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification. *Seattle Box Co. v. Industrial Crating and Packing, Inc.*, 731 F.2d 818, 826, 221 U.S.P.Q.

568, 573-74 (Fed. Cir. 1984). Chemical Formula 1 is thus readily understood from the original structure [O-(A)-O] (redrawn in two dimensions in Chemical Formula 1 as currently claimed) to disclose a unit A which represents the non-oxygen containing structure of the ligand, which would *inherently* be limited to have a double-bonded oxygen where a dative bond to the metal of the precatalyst is present, i.e., the structure of a  $C \equiv O \cdots M$  structural subunit, when A represents a conjugated system as seen in Chemical Formulas 1a and 1b, above. In a generic representation of the core group A of the ligand, it is not necessary to show this level of detail in the structure, (i.e., [O-A=O]) as the Examiner appears to suggest, though drawn linearly here for convenience) to convey all limitations of the instant claims, as this is a superfluous structural detail in view of the inherent structure implied by the limitations of Claim 25, by the structures of Chemical Formulas 1a and 1b, and by the specification, where the Applicant may act as his own lexicographer.

For at least these reasons therefore, Claim 25 is not indefinite as one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification. Reconsideration and allowance are respectfully requested.

#### Claim Rejections under 35 U.S.C. § 103(a)

Claims 1, 6, 8, 10-13, 16-19, 25-28, 35-39, 41, and 42 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,455,650 ("Lipian").

Lipian discloses a method of making cycloolefin polymer with a cationic Group 10 metal (M) complex and a weakly coordinating anion (WCA) having the formula  $[(R')_z M(L')_x (L'')_y]_b [WCA]_d$ , in which  $L'$  is a Group 15 neutral electron donor ligand,  $L''$ , is a labile neutral electron donor ligand, the sum of x, y, and z is 4, and b and d are integers. Abstract.

Lipian extensively discloses addition polymers prepared using norbornene-type monomers. Col. 29, line 46 to Col. 38, line 10. The norbornene-type monomers may be substituted with pendant groups including hydrocarbyl or a pendant substituent containing an oxygen atom. Col. 30, lines 1-9. Preparation of the norbornene-type monomers by Diels-Alder reaction is also disclosed. Col. 34, lines 19-65. Cross-linking multicyclic norbornenes are also disclosed as interchain crosslinking units. Col. 32, lines 56-66. A specific cross-linking multicyclic norbornene, *exo-trans-exo*

norbornene dimer, is disclosed in Examples 183, 185, and 186. Col. 83, line 59; Col. 84, lines 22 and 30.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art; that the prior art relied upon, or knowledge generally available in the art at the time of the invention, must provide some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). “A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). To find obviousness, the Examiner must “identify a reason that would have prompted a person of ordinary skill in the art in the relevant field to combine the elements in the way the claimed new invention does.” *Id.*

As argued previously, the method for preparing a cycloolefin polymer containing a polar functional group is effected as claimed hereinabove by use of a ligand containing oxygen atoms (i.e., a bidentate oxygen-containing ligand), which when used to polymerize a norbornene-based monomer having polar groups of Chemical Formula 5, provides a product yield of 50% or more, where the monomer solution used comprises more than 20 mol% of norbornene-based monomers. These limitations are not taught or disclosed in Lipian, and further, exemplary support is provided only for a yield of 5% for a homopolymer of norbornenemethylol acetate (Example 134). Further, Lipian discloses predominantly the use of allylic catalysts disclosed therein for the polymerization of silylated norbornene-based monomers, and does not teach broadly the polymerization of non-silylated or polar group containing compounds (e.g. of Chemical Formula 5) using catalysts having oxygen-containing bidentate ligands.

The Examiner has recited instances in Lipian of working examples (Col. 49-74 of Lipian; see Office Action dated December 18, 2008, p. 11, 3<sup>rd</sup> paragraph). In reviewing these Examples cited by the Examiner, one skilled in the art will appreciate that the catalysts used in each of these cited examples is not applied to the polymerization of monomers having the structure of Chemical Formula 5, having polar functional groups as defined and claimed in Claim 1 and 41. While one skilled in the art would undoubtedly recognize that achieving a yield of 50% or more based on the



monomer is desirable, as stated by the Examiner in the Office action dated December 18, 2008 on p. 11, 3<sup>rd</sup> and 4<sup>th</sup> paragraphs, Applicants note that such a statement does not constitute a suggestion or incentive that would lead one skilled in the art to select a catalyst system according to the instant claims, from among the thousands of possible catalyst systems disclosed. Further, as admitted by the Examiner, Lipian does not, among the literally hundreds of working examples provided in Lipian, disclose a single working example in which the catalyst system of instant claim 1 is applied to the polymerization of monomers of Claim 5, to achieve a product yield of 50% or more based on monomer weight. Obviousness is not based upon what an artisan could do or what an artisan may try, but is based upon what an artisan would be motivated to do with an expectation of success. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, No. 04-1616 (CAFC March 22, 2006) citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); and *In re Rouffett*, 149 F.3d 1350, 1355-59 (Fed. Cir. 1998). There is no suggestion made in Lipian that would lead one skilled in the art to use the particular combination of precatalyst, oxygen atom-containing ligand, cocatalyst, and monomer claimed in Claim 1 to achieve a yield of greater than 50% or more. This is an unexpected result not taught or suggested in Lipian.

Lipian, despite its extensive disclosure, is silent as to the ratio of exo isomer to endo isomer for the norbornene monomers, and does not teach or disclose a method for polymerizing norbornene monomers with a specified amount of exo isomer present, or a catalyst mixture for the polymerization, in the specification or examples.

The Examiner states in the Office Action dated December 18, 2008 that the exo-content of greater than 50% is inherent to the monomers disclosed in Lipian. The Examiner states that a reasonable basis for believing the exo-isomer content is inherent based in the fact that "functionalized norbornene *inherently* can result in isomers that are endo, exo, or the mixture thereof, depending on the reaction condition." Office Action, p. 14, last paragraph. Applicants maintain that application of the instantly claimed method to the particular problem of polymerizing norbornene-based monomers having an exo-isomer content of more than 50 mol% is not taught in Lipian, nor does Lipian teach even a single exemplary method of synthesizing norbornene-based

monomers with such isomeric ratios as alluded to by the Examiner (Cols. 34-35), and therefore such particular structures and the particular problems of such structures cannot be an *inherent* feature of Lipian which fails to acknowledge or address them.

The Examiner has also stated that a ‘reasonable basis that the claimed “product yield of greater than 50 wt%” is *inherently* possessed in Lipian.’ Office Action dated December 18, 2008, p. 11, last paragraph bridging to p. 12.

In both the Examiners arguments related to the *inherency* of exo-endo ratio, and *inherency* of product yield, Applicants note that the rejections at issue are each an *obviousness* rejection, it appears that the Examiner has inappropriately applied the doctrine of *inherency* in putting forth a rejection under 35 U.S.C. §103 (a). The courts have repeatedly made the distinction that “the *inherency* of an advantage and its obviousness are entirely different questions. That which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown.” *In re Spormann*, 150 U.S.P.Q. 449, 452, (CCPA, 1966), citing *In re Adams*, 53 CCPA 996, 356 F.2d 998, 148 U.S.P.Q. 742. “Further it confuses anticipation by *inherency*, i.e., lack of novelty, with obviousness, which though anticipation is the epitome of obviousness, are separate and distinct concepts.” *Jones et al. v. Hardy*, 220 U.S.P.Q. 1021, 1025 (CCPA, 1984) citing *In re Pearson*, 494 F.2d 1399, 181 U.S.P.Q. 641 (CCPA, 1974); *In re Oelrich*, 666 F.2d 578, 212 U.S.P.Q. 323 (CCPA, 1981). “The examiner should be aware that *inherency* and obviousness are distinct concepts.” *Ex parte GPAC Inc.*, 29 U.S.P.Q.2d 1401, 1415, n. 15, citing *In re Naylor*, 369 F.2d 765, 152 U.S.P.Q. 106 (CCPA 1966); *In re Henderson*, 348 F.2d 550, 146 U.S.P.Q. 372 (CCPA 1965). “The theory of *inherency* is normally reserved for rejections under 35 U.S.C. § 102.” *In re Grasselli*, 318 U.S.P.Q. 303 (Fed. Cir. 1983). Withdrawal of the rejection of obviousness under *inherency* is respectfully requested.

Nowhere in Lipian is any disclosure made with regard to use of norbornene-based monomers with an exo isomer content of 50% or more. One skilled in the art will readily appreciate that exo and endo isomers exist for such compounds; however, Applicants respectfully point out that for all of its disclosure, Lipian still fails to teach or disclose the instantly claimed ratio of “more than 50 mol% of exo isomer”. The structures shown in the above-identified columns of Lipian (Cols. 29-35) are silent as to any disclosure of stereochemistry, and are 2 dimensional representations of

bicyclo[2.2.1] structures. One skilled in the art will readily appreciate that where convention deems it important to do so, absent a teaching otherwise, stereochemistry may be indicated by use of such basic and accepted drawing devices as darkened wedges (a substituent emerging from a page), dashed lines (a substituent going into the plane of the page), or 3-dimensional drawings. Lipian uses none of these conventions and fails to illustrate any stereochemistry in these sections by written description, and therefore does not teach any specific isomers. Lipian therefore simply fails to teach all elements of the instant claims, and does not provide a suggestion or incentive that would lead one skilled in the art to polymerize an exo-rich monomer, with an expectation for success, and therefore cannot render the instant claims 1 and 41 and their dependents obvious.

Applicants technical data, submitted by declaration under 37 C.F.R. § 1.132, in the Response filed on October 19, 2007, illustrates the unexpected advantages of Applicants invention with respect to the particular problem of homo and copolymerizing norbornene-based monomers having an exo-isomer content of 50% or greater, as stated hereinabove, with the particular result of achieving a high yield of 50% or greater for the method. Lipian is silent as to and simply does not teach or disclose the unexpected advantages of high yield with the polymerization of exo-rich norborne monomers, and therefore cannot render the instant claims obvious.

As exemplified by the exo-isomer ratios provided for Preparative Examples 1 and 3-5 (see e.g., 58:42 exo to endo for norbornene carboxylic acid methyl ester in Preparative Example 1, also referred to as "MENB"), Examples 1-9 in the instant Specification teach homopolymerization of high exo MENB. Polymer yields for these examples range from 67.5% to 85.6%. (See Examples 1-9, Specification, pp. 30-34). Further, as shown in the Declaration under 37 C.F.R. § 1.132 in Table 1, submitted previously, polymerization of 5-norbornene-2-carboxylic acid butyl ester having exo/endo ratios of 55/45 (Example A) and 30/70 (Example B) and using identical polymerization conditions including a catalyst mixture comprising palladium acetate (as the precatalyst), tricyclohexyl phosphine (as the first cocatalyst), and N,N-dimethylanilinium tetrakis(pentafluorophenyl) borate (as the second cocatalyst), clearly demonstrates that the high exo-content Example A achieves a significantly higher polymer yield of 56% using the disclosed catalyst mixture, and consistent with the

limitation claimed in claim 1 of a polymer yield of greater than 50%, than is obtained using the high endo Example B, which only results in a polymer yield of 35%. Lipian does not teach or disclose these high exo yields, or the low yields obtained with a high endo monomer, and therefore does not teach these limitations of Claims 1 or 41.

There is no teaching or motivation present in Lipian that would lead one skilled in the art to apply the catalysts of Lipian to a norbornene monomer having an exo-isomer content of 50 mol% or more, and further, that there would be no reasonable expectation for the success of such a combination. By failing to attach any significance to the ratio of exo isomer to endo isomer, Lipian thereby fails also to provide any teaching or suggestion that would lead one skilled in the art to apply the catalysts of Lipian to the problems of polymerizing exo-rich norbornene monomers; indeed, the exemplary data provided by Applicants teaches clearly that no general teaching or disclosure of Lipian would either direct one skilled in the art to apply the particular catalyst combinations claimed in the instant Claims, or would provide one skilled in the art with an expectation that the unexpectedly high yields would be obtained (see in particular the Examples A-E of the data provided in the Declaration under 37 C.F.R. 1.132 of October 19, 2007).

Applicants again request the Examiner reconsider Applicant's data submitted in the Response filed October 19, 2007, as effort was made therein to clearly provide an illustration of the insufficiency of Lipian as to its broad applicability to the problems defined by Applicants of polymerizing high exo-content monomer.

Therefore, Claims 1 and 41 and their dependents 6, 8, 10-13, 16-19, 25-28, 35-39, and 42 cannot be unpatentable over Lipian, which fails to provide a teaching or suggestion that would lead one skilled in the art to modify Lipian to arrive at the invention of the instant Claims and fails to provide a reasonable expectation for success as evidenced by Applicants Exemplary data.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the rejections and allowance of the case are respectfully requested.

If there are any additional charges with respect to this Amendment or otherwise,  
please charge them to Deposit Account No. 06-1130.

Respectfully submitted,  
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